

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 10, 2013 Session

SUSAN MOORE TAYLOR v. JOHN THOMAS TAYLOR

**Appeal from the Circuit Court for Montgomery County
No. MCCCVDN110887 Ross H. Hicks, Judge**

No. M2012-01550-COA-R3-CV - Filed May 30, 2013

Husband appeals the trial court's determination that the parties' residence was marital property; he also appeals the division of the marital property. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, J.J., joined.

Patricia A. Rust, Clarksville, Tennessee, for the appellant, John Thomas Taylor.

Susan Moore Taylor, Clarksville, Tennessee, Pro Se.

MEMORANDUM OPINION¹

John Thomas Taylor ("Husband") and Susan Moore Taylor ("Wife") married in February 2000; there are no children of this marriage. Wife filed for divorce on April 21, 2011, and Husband filed an Answer and Counter-Claim.

Husband, who was 68 years old at the time of trial, is a retired Sergeant Major from the U. S. Army. Although he was employed on a contract basis for the Department of Defense, he wishes to fully retire following a diagnosis that he has brain tumors. Wife, who

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

was 45 years old and has been unemployed for some time, has three associate's degrees and is one credit short of a bachelor's degree. The parties possessed few assets, other than a residence, Husband's 401K account, and some vehicles.

Following mediation, the parties stipulated to a divorce pursuant to Tennessee Code Annotated § 36-4-129, reserving the economic issues for an evidentiary hearing. The case was tried on January 9, 2012, and the trial court entered its Final Decree of Divorce on February 27, 2012.

The trial court found Husband's income to be \$59,000 and that Wife had no income. The parties' main asset was the marital residence. The trial court valued the residence at between \$153,000 and \$168,000, with a mortgage of approximately \$100,000. Marital property also included Husband's 401K, a 2009 Lincoln, and a 2007 Jaguar. The parties' debts included the mortgage on the residence and a Military Star credit card debt.

In its ruling from the bench, the trial court ordered that the residence be sold, and after paying the mortgage and costs of sale, which the court estimated to be \$15,000, the net equity in the residence would be given to Wife in lieu of any equity in Husband's 401K, which was awarded to Husband. Wife was awarded the 2009 Lincoln, which was encumbered. As for the 2007 Jaguar, which was owned by the couple but Wife had given to her son without Husband's consent, the trial court ordered Wife to pay Husband \$2,500 for his interest in the Jaguar. Husband was assigned sole responsibility for the Military Star credit card debt.

Husband subsequently filed a Rule 59.04 motion to alter or amend contending that the trial court erred in its valuation of the marital residence and submitted appraisals valuing the home between \$137,00 and \$142,000. Husband also sought permission to reside in the marital home, allow him to refinance it, and pay Wife the equity in the residence. Following a hearing, the trial court issued an Order on June 11, 2012, in which the court ordered Husband to list the marital residence for sale at \$160,000 and ordered Wife to pay Husband \$1,450 for the value of the Jaguar. Thereafter, Husband filed a Rule 60.02(2) motion in which he once again raised the issue of the value assigned to the marital residence. The trial court again denied this motion. Husband filed a timely appeal.

ANALYSIS

Husband raises two issues. He asserts that the trial court erred in determining the marital residence was marital property and not Husband's separate property. He also asserts that the trial court erred in its division of the marital property based upon an improper valuation of the marital residence.

THE MARITAL RESIDENCE

Wife testified at trial that she made improvements to the home both financially and through her own labor and Husband admitted that Wife was a co-signor on a line of credit on the home, thereby obligating her on the indebtedness. We also note that Husband waived this issue – that the residence was not transmuted into marital property and was his separate property – because he never asserted in the trial court that the residence was his separate property. To the contrary, the trial transcript reveals that Husband requested court approval to refinance the indebtedness on the property and use the loan proceeds to pay Wife her share of the equity in the marital residence. For, these reasons, we find no error with the determination that the residence was marital property.

VALUATION OF THE MARITAL RESIDENCE

Husband contends the trial court's valuation of the marital residence is excessive. We find this argument unpersuasive because the trial court ordered that the residence be sold; thus, the valuation of the residence is irrelevant except for the listing price. Further, if Husband is correct about the value and the residence is listed for sale at too high a value, the trial court has continuing jurisdiction to reduce the sales price.

To the extent that Husband argues the marital property division was inequitable, if Husband is correct that the residence was valued too high, Wife is the one who should complain about the division of the marital estate. We also note that Husband failed to comply with Tennessee Court of Appeals Rule 7 by failing to provide values of numerous items, specifically the 401K account that was awarded to Husband. Failing to substantially comply with the requirements of Rule 7 has been held to constitute a waiver of the issue. *See Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000).

Although we recognize that the parties in this action had modest assets, thus each asset is important, we find no error in the trial court's division of the marital estate.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the Appellant, John Thomas Taylor.

FRANK G. CLEMENT, JR., JUDGE